

*Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.*

## Emergency Rules

### ■ LONG TERM CARE

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to Assisted Living and Shared Housing Establishment Code (77 IAC 295; 44 Ill Reg 16258), Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 16264), Sheltered Care Facilities Code (77 IAC 330; 44 Ill Reg 16279), Illinois Veterans' Homes Code (77 IAC 340; 44 Ill Reg 16291), Intermediate Care for the Developmentally Disabled Facilities Code (77 IAC 350; 44 Ill Reg 16298), Specialized Mental Health Rehabilitation Facilities Code (77 IAC 380; 44 Ill Reg 16312), Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; 44 Ill Reg 16317), all effective 9/15/20. Amendments to Parts 295, 330, and 380 reverse previous emergency rules that, in response to the COVID-19 pandemic, had

### COVID-19 ACTIONS

Numerous Executive Orders and emergency rules have been issued in response to the COVID-19 pandemic. Executive Orders of the Governor concerning this pandemic can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

temporarily suspended certain routine on-site visits and had dispensed with the requirement that DPH conduct an inspection within 30 days of a complaint not related to an abuse/neglect allegation. The Part 340 amendment repeals a COVID-19 related provision stating that DPH would minimize impact on facility

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## Proposed Rulemakings

### ■ DCFS LICENSING

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to the Part titled Background Checks (89 IAC 385; 44 Ill Reg 16009) clarifying and updating background check procedures for child care and foster home licensure. The definition of an "employee" or

### Peremptory Rule, Page 3

"conditional employee" required to undergo a background check (for both criminal history and any history of child abuse/neglect allegations or incidents reported to DCFS or other states' child welfare agencies) has been expanded to include volunteers and unlicensed contractual employees who have access to or

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**ADOPTED RULES:** Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.  
**PROPOSED RULES:** Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.  
**PEREMPTORY RULES:** Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.  
■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.  
**QUESTIONS/COMMENTS:** Submit mail, email or phone calls to the agency personnel listed below each summary.  
**RULE TEXT:** Available on the Secretary of State ([www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://www.ilga.gov)) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

## Adopted Rules

### ■ DAY CARE

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted amendments to Licensing Standards for Day Care Homes (89 IAC 406; 43 Ill Reg 10613), Licensing Standards for Day Care Centers (89 IAC 407; 43 Ill Reg 10634) and Licensing Standards for Group Day Care Homes (89 IAC 408; 43 Ill Reg 10661), all effective 9/18/20, implementing Public Act 100-105. The PA and these rulemakings prohibit day care homes and centers from expelling children for behavioral reasons without creating an intervention plan to transition the child to a more appropriate setting. The rulemakings define “challenging behavior” as any serious and repeated pattern or perception of

behavior that interferes with a child’s ability to engage in developmentally appropriate self-regulation and cognitive and prosocial engagement with peers or adults. When a repeated pattern of challenging behavior by a child (extreme tantrums, physical/verbal aggression, property destruction, self-injury) disrupts the learning environment, a behavior support plan must be created and agreed upon by day care program staff, the child’s parents/primary caregivers, and one or more qualified professionals (e.g., health care provider, licensed clinical social worker, behavioral therapist, early childhood mental health consultant). Temporary removal of a child from regular participation in a day care program due to challenging behavior is permitted only as a last resort if the child

presents a serious safety threat that cannot be addressed by reasonable modifications. Temporary removals must be developmentally appropriate and help the child return to full participation in a group setting as soon as safety allows. Only after a behavior support plan has been fully implemented may a program transition plan that moves the child to a more appropriate setting be initiated. A child cannot be expelled from a day care home or center due to a repeated pattern of challenging behavior; however, a planned transition to another setting will not be considered expulsion. All day care homes and centers must maintain, and notify parents of, their written behavior support and transition policies.

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## Emergency Rules

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activities when conducting on-site investigations and surveys. Amendments to Parts 300, 350, and 390 retain previous COVID-19 emergency provisions prohibiting transfer or discharge of residents for late payment or non-payment and repeal emergency rules that had suspended routine on-site visits and dispensed Certified Nursing Assistants (CNAs) from the obligation to complete a DPH-approved training program and submit required documentation within 120 days of being hired. Those affected by these emergency rules include nursing homes, assisted

living centers, veterans’ homes, specialized mental health facilities, and facilities for the developmentally disabled.

### ■ NURSING ASSISTANTS

DPH also adopted an emergency amendment to Long-Term Care Assistants and Aide Training Programs Code (77 IAC 395; 44 Ill Reg 16329), effective 9/15/20, amending a previous emergency rule (44 Ill Reg 7936, effective 4/21/20) for the remainder of its 150-day term. The emergency amendment terminates the Temporary Nursing Assistant (TNA) Program (which DPH established to address an

anticipated shortage of CNAs during the COVID-19 pandemic) effective 11/2/20. No new TNAs may be hired after 9/18/20. Persons currently working as TNAs may not work in that capacity after 11/2/20, but hours worked as a TNA may be counted towards the clinical instruction requirements for CNA certification. TNAs, their instructors and their employers are affected by this emergency rule.

*Questions/requests for copies of the 8 DPH emergency rules: Elizabeth Paton, DPH, 535 W. Jefferson St., 5<sup>th</sup> Fl., Springfield IL 62761, [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)*

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# Proposed Rulemakings

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unsupervised contact with children. A person who has been indicated as a perpetrator of abuse or neglect requiring 20- or 50-year retention of the investigation records (e.g., incidents involving a child's death or serious injury) or indicated as a perpetrator in two or more separate investigations requiring 5-year retention is presumed unsuitable for licensure. Procedures for requesting a waiver from the presumption of unsuitability are outlined in the rulemaking; the person requesting the waiver must supply at least 3 character references. If a member of a license applicant or licensee's household has been indicated as a perpetrator of abuse/neglect serious enough to create a presumption of unsuitability, a waiver allowing the applicant's licensure can be granted only by the DCFS Director or his/her designee. If the household member was identified as a perpetrator in a single investigation for an incident that does not create a presumption of unsuitability, a waiver can be granted at the supervisory level. The rulemaking also updates the list of criminal convictions that create bars to DCFS employment or licensure; clarifies which offenses are not waivable and which offenses can be waived under certain conditions (e.g., more than 5 or 10 years have passed since the offense); procedures to be followed when criminal charges are pending against an employee, licensee or member of a licensee's

## STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments to Pay Plan (80 IAC 310; 44 Ill Reg 16337), effective 9/17/20. The peremptory rule implements recent collective bargaining agreements with 11 trade unions representing State employees whose pay is based on prevailing wage; it implements various bonuses, clarifies how prevailing wages will be certified,

household; and procedures for appealing a decision to deny licensure based on background history. Those affected by this rulemaking include foster parents and employees or volunteers of DCFS, licensed child care agencies and day care providers.

*Questions/requests for copies/ comments through 11/16/20: Jeff Osowski, DCFS, 406 E. Monroe St., Station #65, Springfield IL 62701-1498, 217/524-1983, fax 217/557-0692, TDD 217/524-3715, [DCFS.Policy@illinois.gov](mailto:DCFS.Policy@illinois.gov)*

## ■ SCHOOL BUS DRIVERS

The SECRETARY OF STATE proposed an amendment to the Part titled School Bus Driver Permit (92 IAC 1035; 44 Ill Reg 16111) implementing Public Act 101-458. The rulemaking adds a cross reference to the updated section of the Illinois Vehicle Code listing cannabis-related offenses

## Peremptory Rule

and clarifies how pension formula adjustments will be applied. The peremptory rule also implements 3 memoranda of understanding with Teamsters bargaining units representing DOT "snowbirds" (highway maintainers employed on a seasonal basis for snow removal).

*Questions/requests for copies: Jason Doggett, CMS, 504 Stratton Bld., Springfield IL 62706, 217/782-4267, fax 217/524-4570, [CMS.PayPlan@illinois.gov](mailto:CMS.PayPlan@illinois.gov)*

that disqualify a person from holding a school bus driver permit. School districts and school bus transportation companies may be affected by this rulemaking.

*Questions/requests for copies/ comments through 11/16/20: Pamela Wright, SOS, 298 Howlett Bldg., Springfield IL 62756, 217/785-3094, [pwright@ilsos.gov](mailto:pwright@ilsos.gov)*

## AIR POLLUTION

The POLLUTION CONTROL BOARD proposed amendments to Air Quality Standards (35 IAC 243; 44 Ill Reg 16081) updating Illinois ambient air quality requirements to correspond with USEPA amendments to the federal National Ambient Air Quality Standards (NAAQS) adopted between 1/1/20 and 6/30/20. A public hearing on these

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## Adopted Rules

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These policies must address initial and ongoing observation of challenging behaviors; communication with parents; and utilization of community resources (e.g., developmental screenings, referrals to other early childhood education or early intervention programs, consultation with the child's health care provider or mental health consultants). Providers must document all steps taken in accordance with their policies to ensure that the child can participate safely in the day care program. Children who do not respond to interventions or whose presence is detrimental to the group shall be transitioned to another program; the day care

provider must work with the child's parents to identify a suitable new program and prevent interruption of child care services. Providers shall also submit an annual report to the State Board of Education listing how many children ages birth to 5 were served, and how many left the program, during the program year. This report shall also include: the number of planned transitions due to behavior and the number of temporary removals of children due to a serious safety threat (to other children or program staff), with each instance classified by the race, gender, disability and language of the child; the class/group size and teacher-child ratio; the length of the program day; and the number of hours of infant or early childhood

mental health consultation provided during the program year. Changes since 1<sup>st</sup> Notice include replacing the term "intervention plan" with "behavior support plan" and revising the definition; replacing "transition plan" with "program transition plan"; adding a definition of temporary removal; and clarifying other definitions. Day care homes and centers will be affected by these rulemakings.

*Questions/requests for copies of the 3 DCFS rulemakings: Jeff Osowski, DCFS, 406 E. Monroe St., Station #65, Springfield IL 62701-1498, 217/524-1983, fax 217 / 557 - 0692 , [CFPolicy@idcfs.state.il.us](mailto:CFPolicy@idcfs.state.il.us)*

## Emergency Rules

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### ■ PROFESSIONAL LICENSING

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted emergency amendments to the Parts titled Genetic Counselor Licensing Act (68 IAC 1251; 44 Ill Reg 16189), Illinois Professional Land Surveyor Act of 1989 (68 IAC 1270; 44 Ill Reg 16193), Marriage and Family Therapy Licensing Act (68 IAC 1283; 44 Ill Reg 16202), Massage Licensing Act (68 IAC 1284; 44 Ill Reg 16212), Naprapathic Practice Act (68 IAC 1295; 44 Ill Reg

16221), Professional Counselor and Clinical Professional Counselor Licensing and Practice Act (68 IAC 1375; 44 Ill Reg 16230), Illinois Speech-Language Pathology and Audiology Practice Act (68 IAC 1465; 44 Ill Reg 15242), and The Structural Engineering Practice Act of 1989 (68 IAC 1480; 44 Ill Reg 16249), all effective 9/15/20 for a maximum of 150 days. Identical proposed amendments appear in this week's *Illinois Register* at 44 Ill Reg 16063, 16065, 16067, 16069, 16071, 16073, 16076, and 16079. The emergency and proposed amendments to Part 1465 allow supervision/

observation of speech pathology and audiology students (required for graduation and licensure) to be conducted either on-site or remotely. The other emergency/proposed rules remove caps on hours of continuing education that can be completed online. Persons seeking to renew licenses in the regulated professions are affected by these emergency rules.

*Questions/requests for copies/comments on the 8 proposed DFPR rulemakings through 11/16/20: Craig Cellini, DFPR, 320 W. Washington St., 3<sup>rd</sup> Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.*



# Proposed Rulemakings

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## WATER POLLUTION

proposed amendments will be held on **Thursday, Nov. 19, at 11:45 a.m.**, via teleconference, at the James R. Thompson Center (Room 11-512), 100 W. Randolph, Chicago, and at the Sangamo Building, PCB Conference Room, 1021 N. Grand Ave., Springfield.

PCB also proposed amendments to Pretreatment Programs (35 IAC 310; 44 Ill Reg 16097) updating wastewater pretreatment requirements to correspond with USEPA amendments adopted from 1/1 through 6/30/20.

*Requests for copies/comments on the 2 PCB rulemakings through 11/16/20: Don A. Brown,*

*PCB, 100 W. Randolph, Suite 11-500, Chicago IL 60601. Please reference docket R21-1 for Part 243 and docket R21-8 for Part 310. Questions: Michael J. McCambridge, same address, 3 1 2 / 8 1 4 - 6 9 2 4 , [michael.mccambridge@illinois.gov](mailto:michael.mccambridge@illinois.gov). Copies of the Board's opinions and orders are available at 312/814-3620 or at the Board's website at <http://www.pcb.illinois.gov>.*

## Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be listed in next week's *Illinois Register* and considered at the October 14, 2020 JCAR meeting.

### DEPT OF CENTRAL MANAGEMENT SERVICES

Conditions of Employment (80 IAC 303; 44 Ill Reg 11294) proposed 7/10/20

### DEPT OF EMPLOYMENT SECURITY

Claimant's Availability for Work, Ability to Work and Active Search for Work (56 IAC 2865; 44 Ill Reg 11738) proposed 7/17/20

### DEPT OF FINANCIAL & PROFESSIONAL REGULATION

Credit Union Act (38 IAC 190; 44 Ill Reg 12703) proposed 7/31/20

Transmitters of Money Act (38 IAC 205; 44 Ill Reg 11364) proposed 7/10/20

### DEPT OF HUMAN SERVICES

WIC Vendor Management Code (77 IAC 672; 44 Ill Reg 11741) proposed 7/17/20

Developmental Disabilities Services (89 IAC 144; 44 Ill Reg 11743) proposed 7/17/20

### IL EMERGENCY MANAGEMENT AGENCY

Political Subdivision Emergency Services and Disaster Agencies (29 IAC 301; 44 Ill Reg 11354) proposed 7/10/20

### IL STUDENT ASSISTANCE COMMISSION

General Provisions (23 IAC 2700; 44 Ill Reg 13035) proposed 8/7/20

AIM HIGH Grant Pilot Program (23 IAC 2766; 44 Ill Reg 13059) proposed 8/7/20

### DEPT OF INSURANCE

Medical Necessity Criteria for Serious Mental Illnesses for Individuals Under the Age of 26 (50 IAC 2035; 44 Ill Reg 11378) proposed 7/10/20

### DEPT OF TRANSPORTATION

Hours of Service of Drivers (92 IAC 395; 44 Ill Reg 13067) proposed 8/7/20